

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation intends to adopt the rule cited as 19A NCAC 02E .0612 and amend the rules cited as 19A NCAC 02E .0601-.0604 and .0608-.0611.

Agency obtained G.S. 150B-19.1 certification:

- ☒ OSBM certified on: April 2, 2014
☐ RRC certified on:
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdot.gov/about/regulations/rules

Proposed Effective Date: January 1, 2015

Public Hearing:

Date: October 16, 2014

Time: 6:00 p.m.

Location: City of Asheboro Public Works Facility Conference Room, 1312 N Fayetteville St., Asheboro, NC

Reason for Proposed Action: *The proposed administrative code changes involve vegetation removal by permitted entities along the NC Highway System. New administrative code (NCAC) is proposed to comply with changes as a result of amendments to existing NC General Statute 136-133.1. In addition, other proposed administrative code revisions are necessary to comply with ongoing implementation of NC General Statute 136-93(b) as well as the newly codified NC General Statute 136-93.3. The revisions clarify existing NCAC rule requirements and reorganize existing rules to improve usability. The new code and proposed rule revisions will enable North Carolina Department of Transportation staff to oversee and ensure compliance with statutory allowances for permitted vegetation removal. The applicable statutes allow for permits to remove vegetation by outdoor advertisers and business facilities, including a new sub-category known as agritourism activities.*

Comments may be submitted to: Helen Landi, NC Department of Transportation, 1578 Mail Service Center, Raleigh, NC 27699-1578

Comment period ends: November 14, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☒ State funds affected - 19A NCAC 02E .0608-.0612
☐ Environmental permitting of DOT affected
☐ Analysis submitted to Board of Transportation
☐ Local funds affected
☐ Substantial economic impact (≥\$1,000,000)
☒ No fiscal note required by G.S. 150B-21.4 – 19A NCAC 02E .0601-.0604 per G.S. 136-93.3

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02E – MISCELLANEOUS OPERATIONS

SECTION .0600 - SELECTIVE VEGETATION REMOVAL POLICY

19A NCAC 02E .0601 SELECTIVE VEGETATION REMOVAL PERMIT REQUIRED TO REMOVE VEGETATION FROM STATE HIGHWAY RIGHT OF WAY

~~(a) In recognition of the State of North Carolina's desire to assure that high quality and aesthetically pleasing views are provided highway users, along with recognizing that, within certain specified limitations, business facilities, hereinafter referred to as facilities, defined as office, institutional, commercial, and industrial buildings, and certain outdoor advertising are legitimate commercial uses of property adjacent to the highways and are an integral part of the State's business and marketing economy, selective vegetation removal~~

~~permits for opening views to facilities and legally erected forms of outdoor advertising, which border State highways, are provided by this Section.~~

~~(b)(a)~~ Selective cutting, thinning, pruning, or removal of vegetation within highway rights of way may be permitted only for opening views to a ~~facility building~~ business facilities and legally erected forms of outdoor advertising as described in G.S. 136-93(b), that which are located directly adjacent to State highway rights of way. For purposes of selective vegetation removal ~~permitting, facilities,~~ permitting, "business facilities", hereinafter referred to as facilities, are defined as office, institutional, commercial, and industrial buildings. In accordance with G.S. 136-93.3, "agritourism activities" as defined in G.S. 99E-30 are considered facilities under this Section. The following requirements apply to facilities under this Section:

- ~~(1)~~ all facilities, except for agritourism activities shall include at least one permanent structural building-building;
- ~~(2)~~ The the building must shall have all required local and State permits, be related to the facility's function, and be open and operational on a year-round basis-basis; and
- ~~(3)~~ When such any cutting, thinning, pruning, or removal of vegetation is allowed pursuant to G.S. 136-93(b), it shall be performed by the permittee or his agent at no cost to the Department of Transportation and shall comply with this Section.

(b) For purposes of this Section, agritourism activities include any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. The following requirements apply to agritourism activities under this Section:

- (1) agritourism activities that qualify for selective cutting, thinning, pruning, or removal of vegetation shall be located directly adjacent to State highway rights of way.
- (2) the requested selective vegetation removal site shall be directly related to agritourism activities.
- (3) the agritourism activities shall be open for business at least four days per week, with a minimum of 32 hours per week, and at least 10 months of the year.
- (4) the applicant for a selective vegetation removal permit shall certify that the activities qualify as an agritourism activity. The Department may require additional documentation from the applicant if the requested site's compliance as eligible agritourism activities remains in question.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93(b); 136-93.3.

19A NCAC 02E .0602 REQUESTS FOR SELCTIVE VEGETATION REMOVAL PERMITS FOR A FACILITY

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) at a facility shall be made by the owner of the facility to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways. ~~Applications with all required documentation~~ Applications shall be submitted in both printed and electronic form. A non-refundable fee of two hundred dollars (\$200.00) must accompany each application. ~~Applications for selective vegetation removal permits shall include the following information:~~

- (1) applicant contact information;
- (2) name and location of the facility;
- (3) indication of request being for a business facility or agritourism activity;
- (4) municipal review indication, if applicable;
- (5) requested use of and site access for power-driven equipment in accordance with Rule .0604(22) of this Section;
- (6) performance and indemnity bond or certified check or cashier's check pursuant to G.S. 136-93;
- (7) if using a contractor for vegetation removal work, identify the contractor and their qualifications if contractor is not listed on the Department's website directory of qualified transportation firms;
- (8) payment of non-refundable two hundred dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
- (9) certificate of liability and all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required and according to North Carolina law;
- (10) geographic information system document and property tax identification number to verify location of facility in relation to municipal limits;
- (11) verification of on-site marking and tree-tagging requirements;
- (12) sketch, and if needed, amended sketch of the requested cut zone and information about trees to be cut, thinned, pruned, or removed in accordance with Rule .0604(11) of this Section;
- (13) certification that applicant has permission from the adjoining landowner(s) to access their private property, if applicable, for the purpose of conducting selective vegetation removal permit activities;
- (14) certification that the facility qualifies as an agritourism activity as required pursuant to G.S. 136-93.3; and
- (15) applicant's notarized signature.

(b) Selective vegetation cutting, thinning, pruning, or removal for opening views to facilities shall be permitted only for the permittee's facilities adjacent to highway right of way at locations where such facilities have been ~~constructed-constructed~~ or where agritourism activities are carried out as set forth in G.S. 136-93.3 and Rule .0601 of this Section. Complete removal of all trees and other vegetation shall not be permitted. Dogwood trees and redbud trees shall be preserved. Other ~~trees, which trees that~~ are not screening the facility from view and are four caliper inches and greater in diameter, measured six inches from the ground, shall be preserved. Trees, shrubs, and other vegetation less than four caliper inches in diameter may be removed. Trees, shrubs, and other ~~vegetation, which vegetation that~~ are four caliper inches or greater in diameter as measured six inches from the ground and not to be preserved, may be cut, thinned, pruned, or removed according to approval of Department personnel designated by the Division Engineer. All vegetation cutting, thinning, pruning, or removal shall be in accordance with ~~accepted-the current edition and~~ subsequent amendments and editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI

Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture. (ISA) standards. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollar (\$20.00) cost. The ISA may be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>.

~~(e) The provisions in this Rule shall not be used to provide visibility to undeveloped property or to on-premise signs.~~

~~(d)(c)~~ Applications ~~must~~ shall be accompanied by a sketch showing the requested limits of the selective cutting, thinning, pruning, or removal of vegetation. For ~~commercial, industrial, institutional, and office facilities~~ facilities, the limits of selective cutting, thinning, pruning, or removal shall be restricted to ~~the one~~ the area of right-of-way immediately adjacent to frontage property of the facility but not to exceed 1,000 contiguous linear feet. Facilities with frontage property on opposite sides of the State highway right-of-way may split the maximum vegetation removal distance between the two sides of the highway, resulting in a total of two contiguous cutting or removal distances along frontage property, with the total of the two sides not exceeding 1,000 linear feet. The permitted limits of the selective vegetation removal permit shall not be altered for subsequent applications. The applicant shall also include on the sketch the location, species, and caliper inches of all trees with a diameter of four caliper inches and greater, as measured six inches above ground level, at the time of the application and desired to be cut, thinned, pruned, or removed.

~~(e) The applicant must certify that permission has been obtained from the adjoining landowner(s) to access their private property, if applicable, for the purpose of conducting activities related to the selective vegetation removal permit application.~~

~~(f)(d)~~ The selective vegetation removal request may be ~~investigated~~ reviewed on site by Department personnel and a representative of the applicant.

~~(g)(e)~~ ~~If~~ In accordance with G.S. 136-93(d), if the application for vegetation cutting is for a site located within the corporate limits of a municipality and ~~if~~ the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so ~~the municipality that local officials~~ the municipality shall be given the opportunity to review the application. Information regarding whether a municipality desires to review vegetation removal applications may be found on the Department website www.ncdot.gov or by contacting the Division Engineer's office.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-93.3; 136-130.

19A NCAC 02E .0603 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT FOR A FACILITY

~~(a) The applicant, as part of the application, shall state in writing the date that he has delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. After the 30-day municipal review period has concluded and all required documentation has been received by the Department, including the fee set out in G.S. 136-18.7, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.~~

(a) Pursuant to G.S. 136-133.2, within 30 days following receipt of the application for a selective vegetation removal permit for a facility, including the fee set out in G.S. 136-18.7, the Division Engineer shall approve or deny the application. The applicant, as part of the application, shall state in writing the date that he or she has delivered a copy of the application with required attachments to a municipality that has previously advised the Department in writing that it seeks to provide comments regarding such applications. The applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. The list of municipalities requesting to review applications shall be maintained and updated by the Department on the website www.ncdot.gov. Upon receipt of the completed application, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, then the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

- (1) ~~The~~ the application is for the opening of view to a facility that does not meet the requirements of Rule .0601 of the Section; which has been declared illegal or is currently involved in litigation with Local, State, or Federal governments;
- (2) ~~It is~~ it is determined by Departmental personnel that the facility is not screened from view;
- (3) ~~The~~ the application is for the opening of view to undeveloped property or to a facility that, due to obstructions off the right of way, is screened from view from the travel way regardless of the presence or absence of trees and other vegetation on the highway right of way;
- (4) ~~Removal~~ it is determined by Department personnel that removal of vegetation ~~will~~ may adversely affect the safety of the traveling public;
- (5) ~~The~~ the application is solely for providing visibility to on-premise signs;
- (6) ~~The~~ the application is for the removal of vegetation planted in accordance with a local, State, or Federal beautification project. However, if a mitigation replanting plan ~~which that~~ is related to the site for which the vegetation permit request is made (as set forth in 19A NCAC 02E .0611 except for the provisions in Paragraph (d) and Subparagraph (g)(11)) is ~~approved~~ agreed upon in writing by the applicant, the Department, and if applicable, the Federal Highway Administration ~~Administration~~, then this subsection does not apply;
- (7) ~~On~~ on two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit. ~~This is not cause for denial if~~ permit, unless the applicant engages a landscape contractor to perform the current work;

- (8) ~~It involves opening of the application is for removal of vegetation that will open views to junkyards;~~
- (9) ~~The the applicant fails to provide complete an application, as described in Rule .0602 of this Section; all documentation required by statute and rule;~~
- (10) ~~If any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way; or State or Federal rules, statutes, or permits; or~~
- (11) ~~If an unlawful destruction or illegal cutting of vegetation has occurred within the highway right-of-way to create, increase, or improve a view to the facility from the travel way including acceleration and deceleration ramps, ramps, the The Department shall not issue a selective vegetation removal permit at the requested site for a period of five years. five years that shall begin on the date the Department resolves the unlawful destruction or illegal cutting incident by settlement agreement with responsible party or the Department administratively closes the case.~~ For the purposes of this Section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department.

Authority G.S. 99E-30; 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.3; 136-130.

19A NCAC 02E .0604 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR FACILITIES

The following apply to the conditions of selective vegetation removal permit for ~~facilities; facilities or permit requirements:~~

- (1) Selected vegetation, within the approved limits as set forth in Rule .0602(c) of this Section may be cut, thinned, ~~pruned-pruned~~, or removed by the permittee in accordance with the standards set out in G.S. 136-133.4;
- (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation, and its employees, attorneys, agents, and contractors against any and all claims or causes of action, and all losses therefrom, arising out of or in any way related to the permittee's operation;
- (3) The permittee shall furnish a ~~Performance and Indemnity Bond or certified check or cashier's check~~ Performance and Indemnity Bond, or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). ~~The bond, certified check or cashier's check~~ Performance and Indemnity Bond, or certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. ~~The bond or certified check or cashier's check~~ Performance and Indemnity Bond, or certified check or cashier's check is required before each permit to cut vegetation is issued. ~~The bond~~ Performance and Indemnity Bond, or certified check or cashier's check shall run concurrently with the permit. ~~The bond~~ Performance and Indemnity Bond, or certified check or cashier's check shall be released after a final inspection of the work by ~~NCDOT the Department~~ reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way, including damage to fencing and other structures within the right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent;
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and ~~this that~~ type of bond shall be kept on file by the Utilities Unit of the Department;
- (5) If the work is to be performed by any entity other than the ~~sign owner or~~ permittee, either the permittee or the other entity ~~must shall~~ furnish the ~~required bonding, Performance and Indemnity Bond or certified check or cashier's check~~, as described in this ~~Section, Rule~~, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the ~~Department~~ Department and can be found on the Department's website www.ncdot.gov. Bonds are to be furnished with the selective vegetation removal ~~Selective Vegetation Removal~~ application form to the ~~appropriate~~ official assigned to receive selective vegetation removal applications at the local ~~NCDOT North Carolina Department of Transportation~~, Division of Highways Office;
- (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his ~~contractor-contractor~~, or agent, shall maintain all legally required insurance coverage, including ~~worker's compensation~~ workers' compensation and vehicle liability in the amounts required by ~~and according to~~ North Carolina law. The permittee, his contractor and ~~agent~~, agent are liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in this ~~paragraph, Item~~, be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy;
- (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality. The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the business facility. The

- permittee shall also provide the property tax identification number for the parcel on which the ~~boundary or~~ facility is located. The Department may require additional information if the boundary or facility location remains in question;
- (8) Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit;
- (9) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the permitted cutting distances according to Rule .0602(c) of this Section. ~~19A NCAC 02E .0602(d)~~. The two maximum points along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. The two maximum points, corresponding to the ~~actual~~ beginning point and the ~~actual~~ ending ~~point, point~~ along the edge of the pavement of the travel way, perpendicular to the maximum points marked along the right-of-way boundary, shall be marked with spray paint. If the facility is located next to an acceleration or deceleration ramp, the two corresponding maximum points shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;
- (10) The permittee shall tag, with visible material or flagging, ~~those trees~~ trees, according to Rule .0602(b) of this Section, with a diameter of four caliper inches and larger, as measured six inches above ground ~~level, level~~ at the time of the application that are screening the facility from view and are requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zone. Trees tagged for cutting, thinning, pruning, or removal shall match with the trees shown on the required sketch of the requested vegetation cut or removal zone;
- (11) The Department may disapprove the requested cutting, thinning, pruning, or removal of selected trees of four caliper inches or greater in diameter, as measured six inches above ground ~~level, which level that~~ are not screening the facility from view from the roadway. The Department ~~will~~ shall make this determination by allowing selective thinning of tree density ~~which that~~ opens the view to the facility or agritourism activities across the entire length of the maximum cut or removal zone, without complete removal of all trees and other vegetation. The Department shall disapprove cutting, thinning, pruning, or removal of dogwood and redbud trees that may have been tagged in error. If trees are disapproved for cutting, thinning, ~~pruning~~ pruning, or removal, the Department shall specify those trees to the applicant during the site review, investigation. The applicant shall remove the tree flagging for the disapproved trees and submit to the Department by electronic means (including electronic mail or facsimile) an amended version of the original sketch of the site by indicating the changes on the sketch and initialing and dating the changes thereon; ~~thereon. Failure to amend the sketch of the site according to this rule shall be considered failure to provide required documentation;~~
- (12) If any cutting, thinning, pruning, or removal of vegetation from any portion of but less than the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way or State or Federal rules, statutes, or permits, the permittee shall comply with applicable easements, rules, statutes, or permits for those portions of vegetation.
- (a) If applicable conservation easements, or conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with applicable easements, State or Federal rules, statutes, or permits including equipment type for those portions of vegetation.
- (b) Portions of the maximum cutting or removal zone not within a conservation easement nor applicable to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, nor regulated by State or Federal rules, statutes, or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-93;
- (13) The permittee ~~must~~ shall adhere to erosion control requirements, according to the North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
- (14) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. ~~and all applicable statutes and rules. Should the inspector fail~~ When a present inspector fails to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit;
- (15) A selective vegetation removal permit ~~must~~ shall be secured for each applicable facility prior to performing any vegetation removal work. The Permittee or its contractor or agent ~~must~~ shall have a copy of the Selective Vegetation Removal Permit selective vegetation removal permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (16) ~~Should~~ When the Division Engineer ("Engineer") or his representative ~~observe~~ observes unsafe operations, ~~activities~~ activities, or conditions, he shall suspend work. Work shall not resume until the unsafe ~~conditions or activities~~ operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the Federal, State and local laws, ordinances, and regulations governing requirements for safety and traffic control of this permit shall result in suspension of work. The permittee shall adhere to safety requirements, according to the North Carolina General Statutes, Article 16, Chapter 95 entitled: Occupational Safety and Health Act of North Carolina. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;
- (17) The permittee or its contractor or agent shall take ~~appropriate~~ measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee shall be

- responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner;
- (18) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (19) The permittee shall provide to the ~~appropriate Department official~~ a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the ~~Department appropriate Department official~~. The permittee shall notify the Department in advance of work scheduled for nights, weekends, and holidays. The Department ~~reserves the right to~~ may modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;
- (20) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department (~~if~~ if the Department's employees are performing the work ~~work~~). The permittee shall provide the Division Engineer with a copy of the written permission;
- (21) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be restricted to individual and manual-operated power equipment and hand-held tools;
- (22) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) and access from the private property side to the right-of-way. Tree ~~removal~~ removal, which that presents a hazard from falling tree ~~parts, parts~~ shall be performed in accordance with the current edition and subsequent amendments and editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture Standards. Arboriculture. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollar (\$20.00) cost. The ISA can be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>. Written authorization ~~must~~ shall be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right-of-way. The applicant ~~must~~ shall provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall also provide contractor qualifications to the Department;
- (23) The Department shall determine the traffic control signage that is required. The permittee shall furnish, erect, and maintain the required signs as directed by the ~~Department~~ Department in accordance with G.S. 136-30;
- (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left in a clean and orderly appearance, leaving no debris at the site as a result of the cutting operation at the end of each workday;
- (25) An applicant for a selective vegetation removal permit for a facility or agritourism activities issued pursuant to Rule .0602 of this Section ~~19A NCAC 02E .0602~~ may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal ~~pursuant to the provisions of this section. Such an appeal shall be in accordance with the provisions of G.S. 136-133.3; and~~
- (26) Upon completion of all work, the Department shall notify the ~~Division Engineer who shall notify the Permittee~~ permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity ~~Bond-Bond~~, or certified or cashier's check to the permittee. For replanting work, a different release schedule shall be applicable according to Rule .0611 of this Section. The permittee may terminate the permit at any time and request return of the Performance and Indemnity Bond, or certified or cashier's check. The termination and request for return of the Performance and Indemnity Bond, or certified or cashier's check shall be made in writing and sent to the Division Engineer.
- (27) ~~Pursuant to 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit, and forfeiture of any or all of the Performance and Indemnity Bond or check as determined by the Division Engineer based on conditions stated in this Rule.~~

Authority 136-18(5); 136-18(7); 136-18(9); 136-30; 136-93; 136-93.3; 136-133.4(e).

19A NCAC 02E .0608 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of an outdoor advertising sign permitted under G.S. 136-129(4) or (5) to the ~~appropriate~~ applicable county's Division Engineer of the North Carolina Department of Transportation, Division of Highways. ~~Applications with all required documentation~~ Applications shall be submitted in both printed and electronic form. For sites within the corporate limits of a municipality ~~which that~~ has previously advised the Department in writing that it seeks to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. ~~A non-refundable fee of two hundred dollars (\$200.00) must accompany each application.~~ Applications for selective vegetation removal permits shall include the following information consistent with G.S. 136-133.1:

- (1) applicant contact information;
- (2) outdoor advertising permit tag number and location of the sign;
- (3) for a sign located on a ramp, indication of application being for a modified cut zone or normal cut zone;
- (4) for applications eligible for municipal review, an indication of the year the sign was erected;
- (5) indication of appropriate maximum cutting distance;
- (6) applicant's desire to remove existing trees, if present. If existing trees are to be removed, such trees require compensation by either monetary reimbursement or removal of two nonconforming outdoor advertising signs or a beautification and replanting plan as set out in Rule .0611 of this Section by submitting the Existing Tree Compensation Agreement form found on the Department web site www.ncdot.gov;
- (7) site plan, if existing trees are to be cut, thinned, pruned, or removed;
- (8) if existing trees are to be cut, thinned, pruned, or removed, the additional required form includes applicant contact information, permit tag number, sign location, the number and caliper inches and monetary value of existing trees to be cut, thinned, pruned, or removed, and indication of compensatory choice;
- (9) the additional form for existing tree removal, based on the compensatory choice made, also requires submittal of either a payment check in the amount of the tree loss monetary value, or indication of the two nonconforming outdoor advertising signs to be surrendered, or agreement to submit a beautification replanting plan to the Department. Compliance with the compensatory choice is a requirement before the selective vegetation removal permit can be approved;
- (10) municipal review indication , if applicable;
- (11) requested use of and site access for power-driven equipment in accordance with Rule .0610(24) of this Section;
- (12) performance and indemnity bond or certified check or cashier's check pursuant to G.S. 136-93;
- (13) if using a contractor for vegetation removal work, identify the contractor and their qualifications if contractor is not listed on the Department's website directory of qualified transportation firms;
- (14) payment of non-refundable two hundred dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
- (15) certificate of liability and all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required and according to North Carolina law;
- (16) geographic information system document and property tax identification number to verify location of sign in relation to municipal limits and territorial jurisdiction boundary;
- (17) verification of on-site marking and tree-tagging requirements;
- (18) if cutting request is for a modified cut zone along a highway ramp, a diagram of the cut zone is required unless diagram is included on a site plan and calculations are required comparing the modified cut zone to the normal cut zone;
- (19) if the Department disputes the site plan, the Department may request additional information per G.S. 136-133.1(c);
- (20) certification that applicant has permission from the adjoining landowner(s) to access their private property for the purpose of conducting selective vegetation removal permit activities; and
- (21) applicant's notarized signature.

~~(b) Applications which include existing trees to be cut, thinned, pruned or removed, must be accompanied by a site plan in accordance with G.S. 136-133.1(c).~~

~~(e)(b)~~ For signs eligible for municipal review the applicant ~~must~~ must include on the application and, as a prerequisite to applicable municipal review submittal, the year the outdoor advertising sign was originally erected. Upon request, the Department ~~will~~ shall furnish the year of sign erection to the applicant. The Department ~~reserves the right to~~ may require additional proof if the year of the sign erection remains in question.

~~(d)(c)~~ The selective vegetation removal request may be ~~investigated~~ reviewed on site by Department personnel and a representative of the applicant.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-129(4); 136-129(5); 136-130; 136-133.1; 136-133.2.

19A NCAC 02E .0609 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT FOR OUTDOOR ADVERTISING

(a) Within 30 days following receipt of the application for a selective vegetation removal permit for outdoor advertising, including the fee set out in G.S. 136-18.7, ~~G.S. 136-18.7 and all required documentation set out in G.S. 136-133.2 and these rules~~, the Division Engineer shall approve or deny the application. The applicant, as part of the application, shall state in writing the date that he or she ~~has~~ delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. The applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. Once all required documentation has been received by the Department, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, then the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

- (1) ~~The~~ the application is for an outdoor advertising location where the outdoor advertising permit is less than two years old pursuant to G.S. 136-133.2;
- (2) ~~The~~ the application is for the opening of a view to a sign ~~which~~ that has been declared illegal, or whose permit has been revoked or is currently involved in litigation with the Department;
- (3) ~~Removal of vegetation will adversely affect the safety of the traveling public; it is determined by Department personnel that removal of vegetation may adversely affect the safety of the traveling public;~~

- (4) ~~The~~the application is for the removal of vegetation planted in accordance with a local, state, or Federal beautification project prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, unless a mitigating replanting plan related to the site for which the vegetation permit request is made as set forth in ~~19A NCAC 02E .0611~~, Rule .0611 of this Section, except for the provisions in Paragraph (d) and Subparagraph (g)(11); and is ~~approved~~agreed upon in writing by the applicant, the Department, and, if applicable, the Federal Highway Administration;
- (5) ~~On~~on two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit. ~~This is not cause for denial if the applicant permit, unless the applicant engages a landscape contractor to perform the current work;~~
- (6) ~~It involves opening of views to junkyards;~~ the application is for removal of vegetation that will open views to junkyards;
- (7) ~~The~~the requested site is subject to a five-year moratorium for willful failure to substantially comply with all requirements specified in a prior selective vegetation removal permit pursuant to G.S. 136-133.4(e);
- (8) ~~The~~the applicant fails to provide a completed application, as described in Rule .0608 of this Section; all documentation required in applicable General Statutes and rules;
- (9) ~~Any~~any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, or due to the application at any time of State statutes or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project. The Department may mitigate within the right of way in the cut zone of a permitted outdoor advertising structure so long as trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face, and such mitigation vegetation may not be cut or removed pursuant to a selective vegetation removal ~~permit~~permit; or
- (10) a modified vegetation removal zone application request along acceleration or deceleration ramps is not in accordance with G.S. 136-133.1(a1) or Rule .0612 of this Section.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130; 136-133.1(a1); 136-133.2; 136-133.3; 136-133.4.

19A NCAC 02E .0610 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING

The following apply to the conditions of selective vegetation removal ~~permit~~ permits for outdoor ~~advertising~~advertising or permit requirements:

- (1) Selected vegetation, as defined in G.S. 136-133.1(b), may ~~be allowed to~~ be cut, thinned, pruned or removed in accordance with the standards set out in G.S. 136-133.4;
- (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation, its employees, attorneys, agents, and contractors against any and all claims or causes of action, and all losses ~~there from, therefrom,~~ arising out of or in any way related to the permittee's operation;
- (3) The permittee shall furnish a Performance and Indemnity ~~Bond~~Bond, or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). ~~The bond, certified check or~~ Performance and Indemnity Bond, or certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. ~~The Performance and Indemnity Bond, or certified check or cashier's check~~Performance and Indemnity Bond, or certified check or cashier's check is required before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by ~~NCDOT~~the Department reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way, including damage to fencing and other structures within the right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent;
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and ~~this~~that type of bond shall be kept on file by the Utilities Unit of the Department;
- (5) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity ~~must~~shall furnish the Performance and Indemnity Bond or certified check or cashier's check~~required bonding~~ as described in this ~~Section~~Rule, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the ~~Department~~Department, or on the Department's website www.ncdot.gov. Bonds are to be furnished with the ~~Selective Vegetation Removal~~selective vegetation removal application form to the ~~appropriate~~official assigned to receive selective vegetation removal applications at the local ~~NCDOT~~North Carolina Department of Transportation, Division of Highways Office;
- (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his ~~contractor or agent~~contractor, or agent shall maintain all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required by and according to North Carolina law. The permittee, his ~~contractor or agent~~contractor, or agent, are liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in this ~~Paragraph~~Item, be shown as an

- additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy;
- (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, per G.S. 136-133.1(a)(5). The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the outdoor advertising structure. The permittee shall also provide the property tax identification number for the parcel on which the outdoor advertising structure is located. The Department may require additional information if the boundary or sign location remains in question;
- (8) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the proper permitted cutting distances according to G.S. 136-133.1(a)(1) – (6). Points A & B along the right-of-way boundary (or fence if there is a control of access fence) ~~are to~~ shall be marked with visible flagging tape. Points C, D, & E along the edge of the pavement of the travel way ~~are to~~ shall be marked with spray paint, including the actual distances. If the sign is located at an acceleration or deceleration ramp, points C, D, & E shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;
- (9) The permittee shall perform tagging of trees. The permittee shall tag with a visible material or flagging all trees, including existing trees and other trees that are, at the time of the selective vegetation removal application, greater than four-inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The applicant shall tag the existing trees (the exact same existing trees as on the site plan) that are desired to be cut, thinned, pruned, or removed with visible material or flagging of a contrasting color. The permittee shall denote on the site plan or on the application the colors of flagging used to mark each category of trees;
- (10) If there are existing trees requested to be removed, before any work can be performed under a selective vegetation removal permit the permittee ~~must~~ shall:
- (A)(a) ~~Submit~~ submit the reimbursement to the Department pursuant to G.S. ~~136-93.2~~ 136-133.1(d) in a cashier's or certified check;
- (B)(b) ~~Fully~~ fully disassemble two non-conforming outdoor advertising signs and their supporting structures and return the outdoor advertising permits tags to the Department pursuant to G.S. 136-133.1(d); or
- (C)(c) ~~Obtain~~ obtain Departmental approval for the replanting plan in accordance with G.S. 136-133.1(e) and ~~19A NCAC 02E .0611, Rule .0611 of this Section.~~
- (11) Should the vegetation removal permit be approved and tree removal is scheduled, for all disputed trees the sign owner shall cut such tree stumps in a level, horizontal manner uniformly across the stump at a four inch height, so that tree rings can be counted by the applicant or the Department to determine the age of the tree;
- (12) After a tree is removed and the applicant or the Department discovers, based on the number of rings in the tree stump, an error in the tree survey report or site plan, the Department shall request an amendment to the tree survey report or site plan, and a redetermination pursuant to G.S. 136-133.1(d) and (e) shall be made by the Department and the applicant shall be subject to that redetermination;
- ~~(13) If any cutting, thinning, pruning, or removal of vegetation from any portion but less than the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, prior to September 1, 2011, or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, or due to the application at any time of State statutes or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project or due to mitigation within the right of way in the cut zone of a permitted outdoor advertising structure so long as trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face, the permittee shall comply with applicable conditions, mitigation, rules, statutes, or permits for such portion of the cutting or removal zone. If applicable conservation agreements, mitigation or conditions affecting the right of way to which the State is subjected or agrees to in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with applicable conservation agreements, mitigation, conditions, State or Federal rules, statutes or permits including equipment type for those portions of the cutting or removal zone. Portions of the maximum cutting or removal zone not within a conservation or mitigation area nor applicable to conditions affecting the right of way to which the State is subject or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, nor regulated by State or Federal rules, statutes, or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-93.~~
- (13) For purposes of this Rule, portion of the cut or removal zone means less than the entirety of the cut or removal zone, the permittee shall comply with applicable conditions, mitigation requirements, rules, statutes, or permit requirements related to cutting, thinning, pruning, or removal of vegetation within the right of way, where any portion of the cut or vegetation removal zone is restricted for the following reasons set forth below:

- (a) the State is subjected to or agrees in writing to subject itself to conditions affecting the right of way, including conservation agreements, prior to September 1, 2011, or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later; or
- (b) applicable State or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project prohibit vegetation removal; or
- (c) mitigation within the right of way in the cut zone of a permitted outdoor advertising structure prohibits vegetation removal, however, trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face.

If the reasons set forth in Sub-items (a), (b), and (c) of this Item allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with the conditions set forth above, including equipment type for those portions of the cutting or removal zone. Vegetation removal for portions of the maximum cutting or removal zone not affected by the reasons set forth in Sub-items (a), (b) and (c) of this Item shall be governed by standards set out in G.S. 136-93.

- (14) The permittee ~~must~~ shall adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
- (15) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit and all applicable General Statutes and rules. ~~Should the inspector fail~~ When a present inspector fails to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit;
- (16) A selective vegetation removal permit ~~must~~ shall be secured for each applicable outdoor advertising site prior to performing any vegetation removal work;
- (17) ~~Should the Division Engineer or his representative observe unsafe operations, activities or conditions, he shall suspend work. Work shall not resume until the unsafe conditions or activities have been eliminated or corrected. Failure to comply with any of the requirements for safety and traffic control of this permit shall result in suspension of work; When the Division Engineer ("Engineer") or his representative observes unsafe operations, activities, or conditions, he shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the Federal, State and local laws, ordinances, and regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, according to the North Carolina General Statutes, Article 16, Chapter 95 entitled: Occupational Safety and Health Act of North Carolina. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;~~
- (18) The applicant ~~must~~ shall certify that he or she has permission from the adjoining landowner(s) to access their private property for the purpose of conducting activities related to the selective vegetation removal permit application;
- (19) The ~~Permittee-permittee~~ or its contractor or agent ~~must~~ shall have a copy of the ~~Selective Vegetation Removal Permit-selective vegetation removal permit~~ on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (20) The permittee or its contractor or agent shall take ~~appropriate~~ measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee shall be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner;
- (21) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another selective vegetation removal permit ~~at the same site~~ during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (22) The permittee shall provide to the ~~appropriate~~ Department official a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the ~~Department, appropriate Department official.~~ The permittee shall notify the Department in advance of work scheduled for nights, weekends and holidays. The Department ~~reserves the right to~~ may modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;
- (23) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department ~~(if if the Department's employees are performing the work, work).~~ The permittee shall provide the Division Engineer with a copy of the written permission;
- (24) An applicant shall be allowed to use individual and manual-operated power equipment and hand held tools at any site during initial cutting or removal of vegetation or while maintaining a site during the duration of a selected vegetation removal permit. The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) if ~~the Department determines the permit applicant can demonstrate satisfactorily to the Department with an onsite inspection~~ that the use of such equipment will not cause undue safety hazards, any ~~erosion-erosion~~, or unreasonable damage to the right of way. Access for use of any equipment ~~must~~ shall be gained from the private property side to the right of way for each individual selective removal permit site. Tree removal, which presents a hazard from falling tree parts, shall be performed in accordance with the current edition and subsequent amendments and editions of the American National

Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollar (\$20.00) cost. The ISA can be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>. Written authorization ~~must shall~~ be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right of way. The applicant ~~must shall~~ provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall provide contractor qualifications to the Department.

- (25) The Department shall determine the traffic control signage that is required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department;
- (26) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left ~~in a clean and orderly appearance, with no debris at the site as a result of the cutting operation~~ at the end of each workday; and
- (27) Upon completion of all work, the Department shall notify ~~the Division Engineer who shall notify the Permittee~~ permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity ~~Bond-Bond~~, or certified or cashier's check to the permittee. For replanting work, a different bond release schedule shall be applicable according to Rule .0611 of this Section, to 19A NCAC 02E .0611(g)(8); ~~The permittee may terminate the permit at any time and request return of the Performance and Indemnity Bond, or certified or cashier's check. The termination and request for return of the Performance and Indemnity Bond, or certified or cashier's check shall be made in writing and sent to the Division Engineer.~~
- (28) ~~Pursuant to G.S. 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit and forfeiture of any or all of the Performance and Indemnity Bond or check as determined by the Division Engineer based on conditions stated in this Rule.~~

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-127; 136-130; 136-133.1; 136-133.1(a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5.

19A NCAC 02E .0611 BEAUTIFICATION AND REPLANTING REQUIREMENTS FOR SELECTIVE VEGETATION REMOVAL PERMITS

(a) Any site with a valid selective vegetation removal permit issued pursuant to G.S. 136-93(b) qualifies for a beautification and replanting ~~plan-plan as set forth in G.S. 136-133.1 (e).~~

(b) For future selective vegetation removal applications at replanted sites, replanted materials may be removed only if partially blocking the view to a sign face. In this case, the Department ~~will shall~~ require plant substitutions on a one for one basis. All requests for plant substitutions shall be approved by the Department and installed according to the rules in this Section.

(c) Submittal of a ~~selective vegetation removal application-site plan~~ shall be in accordance with G.S. 136.133.1(c).

(d) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in ~~19A NCAC 02E Rules .0603(b)(6) and .0609(b)(4) of this Section. .0609(b)(4).~~ The caliper inches of existing trees to be removed, according to the applicant's site plan shall equal the caliper inches to be replanted by the applicant at the outdoor advertising site from which existing trees are requested to be removed. If the caliper inches of existing trees from the site plan exceed the density of the Departments replanting site design, the excess caliper inches of trees shall be delivered by the applicant to the Department according to the schedule described in Subparagraph (g)(6) of this Rule. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches. ~~The excess trees shall be planted and maintained by the Department at sites to be determined by the Department.~~

(e) For sites that qualify according to the replanting criteria described in this Rule, the Department shall consult with the applicant and any local government that has requested to review and provide comments on selective vegetation removal applications pursuant to G.S. 136-93(d) or has notified the Department of its desire to review and provide comments on beautification and replanting plans. The local government shall be given 15 days to review and provide comments on beautification and replanting plans. If the local government does provide comments on a beautification and replanting plan, the Department shall take the comments into consideration. If the local government does not make appropriate request for a review, the criteria stated in the rules in this ~~section~~ Section shall be followed for replanting determination.

(f) In consideration of differences in outdoor advertising sign structure heights, business facilities, or agritourism activities, the Department shall maintain on file regionalized landscape design plans and plant lists as a guide for applicants. The applicant may submit one of the Department's plans or a proposed beautification and replanting plan prepared and sealed by a North Carolina licensed landscape architect. The Department's written approval, based on the current edition and subsequent amendments and editions of the American Standard for Nursery Stock ANSI Z60.1 approved by the American National Standards Institute and published by the American Horticulture Association for a minimum of a 1.5 caliper inch replanted tree, of the beautification, replanting, and maintenance plan shall allow the applicant to proceed with requested vegetation cutting, thinning, pruning or removal at the ~~outdoor advertising~~ site. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained free of charge from this website of the American Horticulture Association: www.americanhort.org. The mailing address for AmericanHort is 2130 Stella Ct, Columbus, OH 43215.

(g) The approved beautification and replanting plan becomes a part of the selective vegetation removal permit pursuant to G.S. 136-93(b) and 136-133.1(e). All ~~applicable permit requirements of the permit, including the performance bond and insurance,~~ shall continue to apply until all replanting and establishment requirements are satisfied and accepted in writing by the Department. The Department shall approve the replanting portion of the selective vegetation removal permit in writing ~~determining and detail~~ the requirements of the beautification and replanting plan. The requirements include the following:

- (1) The work for initial plantings and all future replacements ~~must be adhered to~~ by the permittee or any ~~or~~ of their employees, agents, or assigns ~~according to~~ shall be in accordance with the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Transplanting ANSI A300 (Part 6), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc., ~~International Society of Arboriculture standards~~ except as stipulated in the rules in this Section. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a twenty dollar (\$20.00) cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org. Initial and replacement planting ~~will~~ may be considered acceptable ~~when if~~ the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one ~~species that~~ species, which are shown on the plans to be planted within a bed, shall be planted concurrently and the entire group shall be completed before any plant therein is considered acceptable. Replacement planting consists of replacing those plants ~~which that~~ are not in a living and healthy condition as defined in these Rules;
- (2) The permittee ~~must~~ shall adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
- (3) All plant materials shall be approved in writing by the Department prior to arrival at the ~~outdoor advertising site~~ or prior to excess trees being furnished and delivered to the Department. The approval shall be based on the current edition and subsequent amendments and editions of the American Standard for Nursery Stock, ANSI Z60.1 approved by the American National Standards Institute and published by the American Nursery and Landscape Association Horticulture Association. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained free of charge from this website of the American Horticulture Association: www.americanhort.org. The mailing address for AmericanHort is 2130 Stella Ct, Columbus, OH 43215;
- (4) All work is subject to NCDOT Division of Highways inspection and shall be scheduled with the Department. A minimum 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way for any beautification and replanting plan requirements;
- (5) Grinding ~~or other mechanical removal of~~ all cut stumps (to a minimum depth of four inches below ground level) ~~must~~ shall be completed in the area of replanting during the preparation of the site, prior to initial planting;
- (6) All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) apply when the permittee provides the Department with excess plant material at a site where existing caliper inches exceeds the site design capacity;
- (7) The permittee shall contact the Department to schedule a final replanting acceptance inspection upon completion of any plant material installation. For one year from the date of the initial planting acceptance for the entire replanting plan, the permittee ~~must~~ shall establish all plant materials according to these provisions. Establishment for all initial or replacement plants shall begin ~~immediately~~ after they are planted. The permittee shall be responsible for the area around plantings for a distance of six feet beyond the outside edges of the mulch. Establishment shall include cutting of grass and weeds; watering; replacement of mulch; repair or replacement of guy stakes, guy wires, and water rings; and other work to encourage the survival and growth of plant material. The permittee shall remove and dispose of dead plants from the replanting plan site during the establishment period. Prior to the end of the one-year establishment period, the permittee is responsible for contacting the Department to schedule a site meeting with Departmental officials to identify plants to be replaced that are not in a living and healthy condition. Plants do not meet the living and healthy condition requirement and need replacement if 25 percent or more of the crown is dead, if the main leader is dead, or if an area of the plant has died leaving the character of its form compromised, lopsided, or disfigured. The permittee shall replace, during the planting period, plant material needed to restore the planting to the original quantity, size, and species of plant material. Any desired changes in plant material proposed by the permittee ~~must~~ shall be requested in writing to the Department. The Department shall notify the permittee in writing of the approved changes to the replacement plantings;
- (8) At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee's work and release the ~~applicable~~ bond. Then a one-year observation period shall begin in which the permittee ~~or sign owner~~ shall maintain stability of the original and replacement plantings to promote their continued livability and healthy growth. The ~~sign owner permittee~~ is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation ~~period and in period~~. Replacement shall occur in accordance with the dates of planting as stated in the rules in this Section;
- (9) After the one-year observation period concludes, the Department shall notify the ~~sign owner permittee~~ if the permit requirement conditions have been met successfully;
- (10) Replanted materials may be pruned according to the ~~International Society of Arboriculture Standards,~~ current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Pruning

ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care Industry Association Inc., however, topping of trees or other vegetation is not allowed. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a twenty dollar (\$20.00) cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org;

- (11) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in Rule .0609(b)(4) of this Section. ~~19A NCAC 02E .0609(b)(4).~~ Excess plants or trees furnished and delivered to the Department, shall receive care and handling in accordance with the following: In digging, loading, transporting, unloading, planting, or otherwise handling plants, the plants The permittee shall exercise care to prevent windburn; windburn, injury to or drying out of the trunk, branches, or roots; roots, and to prevent freezing of the plant roots. The solidity of the plant ball shall be preserved. Delivery of excess plant material shall be scheduled with the Department, allowing a minimum three days notification for each delivery. The permittee's responsibility for the furnished excess plants or trees ends at the time the plant material is delivered to, inspected by, and accepted by the Department;
- (12) For mitigating replanting plans according to ~~19A NCAC 02E .0609(b)(4).~~ Rule .0609(b)(4) of this Section, trees and other plant material for a proposed beautification and replanting plan taken from the Department's landscape design plans and plant lists or prepared and sealed by a North Carolina licensed landscape architect, may be of a projected mature height to reduce visibility limitations to outdoor advertising sign faces; faces. As an alternative to replanting, mitigation by pruning for vegetative crown reduction at an existing beautification project may be allowed, if mutually agreed upon in writing by the Department and permittee. All pruning shall be performed by removing the fewest number of branches necessary to accomplish the desired objective but in consideration of normal seasonal regrowth for the type of vegetation. All pruning for purposes of mitigation shall be in accordance with the current edition and subsequent amendments and editions of the American National Standards for Tree Care Operations- Pruning ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a twenty dollar (\$20.00) cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org. In the case of vegetation mortality caused by pruning, replacement plantings shall be required according to Rule .0611 of this Section;
- (13) Should the outdoor advertising structure related to the selective vegetation permit be sold or transferred, the new owner or permit holder is subject to the requirements in the General Statutes and rules in this section; Section, including those regarding planting, establishment, replacement or renovation plantings, minimum living and healthy condition, and observation; and
- (14) Willful failure to substantially comply with the requirements of this Paragraph Rule for the beautification and replanting plan shall subject the permittee to penalties prescribed in G.S. 136-133.4.

Authority G.S. 99E-30; 136-93; 136-93(b); 136-93.3; 136-130; 136-133.4.

19A NCAC 02E .0612 MODIFIED VEGETATION CUT OR REMOVAL ZONE FOR OUTDOOR ADVERTISING

(a) In accordance with G.S. 136-133.1(a1), at the request of an selective vegetation removal permit applicant, the Department may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone along acceleration and deceleration ramps. Upon approval of a modified cut zone, the conditions of the initial permit as set forth in Rule .0604 and Rule .0610 of this Section, in addition to the following requirements shall apply:

- (1) the request for a modified vegetation cut or removal zone along acceleration or deceleration ramps shall be noted on the selective vegetation removal application at the time the application is submitted. The same application requirements as set forth in Rule .0608 of this Section shall apply to a modified vegetation cut or removal zone request.
- (2) the application shall include a diagram of the modified cut zone request to clearly indicate the relocated point A to point D line and the relocated point B to point E line. If the request includes removal of existing trees as defined in G.S. 136-133.1(b)-(e), the applicant may indicate the relocated points on the required site plan in lieu of a separate diagram. The applicant shall provide calculations showing that the total aggregate area of cutting or removal equals the maximum allowed in G.S. 136-133.1(a). The applicant shall mark the modified points A, B, D, and E, as applicable, at the site for review by the Department. Modified points A and B along the right-of-way boundary (or fence if there is a control of access fence) are to be marked with visible flagging tape. Modified points C, D, & E along the edge of the pavement of the ramp are to be marked with spray paint, including the actual distances. Such markings for a modified vegetation cut or removal zone under G.S. 136-133.1(a1) shall represent and equal the maximum cut or removal area along the surface of the ground allowed in G.S. 136-133.1(a).
- (3) the Department may authorize a one-time modification of the maximum vegetation cut or removal zone for each requested sign face when the view to the outdoor advertising sign face will be improved. The modified area of vegetation cutting or removal shall cause the point A to point D line and the point B to point E line as set forth in G.S. 136-133.1(a) to be relocated as long as the total aggregate area of cutting or removal does not exceed the maximum allowed for the defined cut or removal zone in G.S. 136-133.1(a). Points A and B shall always remain on the right-of-way line and points D and E shall always remain on the edge of the pavement of the ramp. G.S. 136-

- 133.1(g) regarding cutting vegetation from the private property side along a controlled access fence shall remain applicable from relocated point A of the modified cut zone to relocated point B of the modified cut zone.
- (4) the Department shall establish and document the modified cut or removal zone as the permanent view zone, which shall not be altered for future selective vegetation removal permits.
 - (5) If an outdoor advertising site has previously been cut under a valid selective vegetation removal permit, in accordance with G.S. 136-93(b), to the extent that the requirement of not exceeding the total aggregate area of cutting or removal allowed in G.S. 136-133.1(a) cannot be met, the applicant may apply for a modified cut or removal zone no sooner than one year after the most recent cutting activity at the site. Within the one year period, the applicant may, to the extent that the maximum cut or removal zone defined in G.S. 136-133.1(a) was not previously cut, apply that uncut area towards determining the limits of the one-time modified cut request as defined in G.S. 136-133.1(a1) and the rules of this Subchapter.
 - (6) Should the outdoor advertising structure subject to a modified cut or removal zone for a selective vegetation removal permit be sold or transferred, the new owner or outdoor advertising permit holder shall be subject to G.S. 136-133.1(a1), and the rules of this Subchapter and shall not alter the modified cut zone as established and documented for a previous sign owner or permit holder.
 - (7) Upon denial or conditioning by the Department of Transportation of a modified vegetative cut or removal zone under G.S. 136-133.1(a1), the applicant may file an appeal pursuant to G.S. 136-133.3.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-127; 136-130; 136-133.1; 136-133.1(a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5.